

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 431 Liens against Motor Vehicles and Vessels

SPONSOR(S): Civil Justice Subcommittee, Fischer

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Mawn	Poche
2) Transportation & Infrastructure Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Liens are claims against property that evidence a debt, obligation, or duty. Liens can be created by judgment, equity, agreement, or statute. The rights and duties of a lienholder depend on the type of lien created and are generally set out in the order, agreement, or statute creating the lien.

Motor vehicle repair shops (repair shops) may place liens on motor vehicles (vehicles) for labor or services performed on the vehicles under a written repair estimate to recover the costs of repair and storage. Similarly, the operators of towing and storage companies (towing-storage operators) may place liens on vehicles or vessels to recover the costs of towing and storage. Notice of the claim of lien must be sent to interested parties by certified mail within a specified timeframe, and the vehicle or vessel may be sold if no one claims it or the balance owed for repairs, towing, or storage remains unpaid. Notice of the sale must be sent to interested parties and published in a newspaper in the county where the sale is to occur prior to the date of the sale.

Some repair shops and towing-storage operators exploit existing lien law to wrest away vehicle finance and leasing companies' security or ownership interest in vehicles upon which liens have been placed. These practices allegedly take two forms: fraudulent delivery of the notice of lien and fraudulent or inflated charges.

CS/HB 431:

- Adds information that must be included in notices of claim of lien and sale;
- Revises procedures for identifying unknown vehicle and vessel owners and lienholders;
- Requires notices of claim of lien and sale to be sent within specified timeframes;
- Requires repair shops to allow inspection of vehicles subject to a claim of lien following a written inspection request;
- Allows both electronic and paper title to evidence an interest in a vehicle or vessel;
- Allows lienholders to post a bond for the release of a vehicle subject to a claim of lien for repair;
- Allows owners and lienholders to post a bond for the release of a vehicle or vessel subject to a claim of lien for towing and storage charges at any time before the sale of the vehicle or vessel;
- Permits administrative fees of no more than \$250 for the repair, towing, or storage of vehicles, prohibits fees not expressly authorized, and caps the total amount of fees that may be charged at \$250;
- Requires lienors to file specified documentation with the Department of Highway Safety and Motor Vehicles (DHSMV) prior to transferring title to a vehicle or vessel sold to satisfy a lien for repairs, towing, or storage;
- Prohibits the DHSMV from transferring title to a vehicle or vessel without certain documents; and
- Requires a third-party mailing service certified by the DHSMV to send all notices of lien and sale.

The bill may impact state government but does not appear to impact local governments.

The bill provides an effective date of January 1, 2020.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0431a.CJS

DATE: 3/8/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A lien is a claim against property that evidences a debt, obligation, or duty.¹ A lien can be created by judgment, equity,² agreement, or statute.³ The rights and duties of a lienholder depend on the type of lien created and are generally set out in the order, agreement, or statute creating the lien.⁴ A judicial lien, including an equitable lien, continues until the terms of the judgment are satisfied, the lien expires, or the judgment is overturned.⁵ A statutory lien expires in the manner and method set forth in statute, and a consensual lien expires according to the terms of the parties' agreement.⁶

Liens Claimed by Motor Vehicle Repair Shops

Motor vehicle repair shops (repair shops) are regulated by the Department of Agriculture and Consumer Services (DACS) under the Florida Motor Vehicle Repair Act, which requires all repair shops, with minor exceptions, to register with DACS.⁷ A repair shop may be fixed or mobile and includes a person or business that does vehicle glass work for compensation.⁸

When a customer⁹ requests that a repair shop perform repairs to a motor vehicle¹⁰ (vehicle) that will cost more than \$100, the shop must prepare a written estimate of the cost of the repairs before beginning any work, unless the customer waives his or her right to such an estimate.¹¹ Following the completion of any repairs, the repair shop must give each customer a legible copy of an invoice for the repairs.¹²

Unlawful Acts and Practices

It is unlawful for any repair shop or its employees to:

- Make or charge for repairs not expressly or impliedly authorized by the customer;¹³
- Misrepresent that repairs have been made to a vehicle;¹⁴
- Fraudulently alter a customer contract, estimate, invoice, or other document;¹⁵ or
- Make or authorize a false, deceptive, or misleading written or oral statement.¹⁶

¹ Fla. Jur. 2d Liens § 37:1

² Equitable liens are judicial creations designed to prevent unjust enrichment of a party. See Ralph E. Boyer and Barry Kutun, *The Equitable Lien in Florida*, 20 U. Miami L. Rev. 731 (1966), available at <https://repository.law.miami.edu/cgi/viewcontent.cgi?article=3127&context=umlr> (last visited Mar. 6, 2019).

³ Fla. Jur., *supra*, at 1.

⁴ *Id.*

⁵ Fla. Jur. 2d Liens and Encumbrances on Title § 4:21.

⁶ *Id.*

⁷ Ss. 559.901-559.9221, F.S.

⁸ S. 559.903(6) and (7), F.S.

⁹ "Customer" means the person who signs the written repair estimate or any other person whom the person who signs the written repair estimate designates on the written repair estimate as a person who may authorize repair work. S. 559.903(1), F.S.

¹⁰ "Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons and property, and propelled by power other than muscular power. "Motor vehicle" also means a recreational vehicle primarily used as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. Ss. 320.01(1)(a) and (b), F.S.

¹¹ Ss. 559.905(1) and 559.905(3), F.S.

¹² S. 559.911, F.S.

¹³ S. 559.920(2), F.S.

¹⁴ S. 559.920(3), F.S.

¹⁵ S. 559.920(6), F.S.

¹⁶ S. 559.920(8), F.S.

Claim of Lien; Notice

At any time after completion of repairs made to a motor vehicle under a written estimate, a repair shop may claim a lien on the vehicle for the cost of the repairs.¹⁷ A repair shop must give notice of a claim of lien to:

- The registered owner of the vehicle;
- The customer listed on the repair order; and
- All other persons claiming an interest in or lien on the vehicle, as disclosed by the records of:
 - The Department of Highway Safety and Motor Vehicles (DHSMV); and
 - Any corresponding agency in another state in which the vehicle is identified as being titled or registered by the National Motor Vehicle Title Information System¹⁸ (NMVTIS) or an equivalent commercially available system.¹⁹

The notice of claim of lien must be sent by certified mail within seven business days from the date storage charges begin to accrue and must contain:

- The vehicle's description;²⁰
- The name and address of the vehicle's owner, the customer listed on the repair order, and any person claiming an interest in or lien on the vehicle;²¹
- The repair shop's name, address, and telephone number;²²
- The date, time, and location of proposed or scheduled sale of the vehicle, if known;²³ and
- Notice that:
 - The repair shop claims a lien on the vehicle for labor and services performed and storage charges, if any, and the amount that, if paid, would satisfy the lien;²⁴
 - The lien is subject to enforcement and the vehicle may be sold to satisfy the lien;²⁵
 - The owner of the vehicle or any person claiming an interest in or lien on the vehicle has a right to a hearing at any time before the sale;²⁶
 - The owner of the vehicle has a right to recover possession of the vehicle without instituting judicial proceedings by posting a bond;²⁷
 - Any proceeds from the sale of the vehicle remaining after payment of the amount claimed to be owed to the lienor will be deposited with the clerk of the circuit court for disposition;²⁸ and
 - A lienholder, if any, has the right to demand a hearing or to post a bond.²⁹

If a repair shop fails to give notice of the claim of lien to any person claiming a lien on the vehicle within seven business days after the storage charges begin to accrue, the repair shop is precluded from charging for more than seven days of storage.³⁰ However, failure to timely provide the notice does not affect charges owed for repairs.³¹

¹⁷ This is a possessory lien, meaning a repair shop can only claim a lien on a vehicle if it has actual or constructive possession of the vehicle. Ss. 713.58(1) and (3), F.S.; *State v. Miller*, 373 So. 2d 677, 678 (Fla. 1979) ("appellee invoked the provisions of section 713.58, Florida Statutes, which grants a possessory lien in favor of persons providing labor and services on personal property").

¹⁸ "National Motor Vehicle Title Information System" means the federally authorized electronic National Motor Vehicle Title Information System. S. 713.78(1)(d), F.S.

¹⁹ "Equivalent commercially available system" means a service that charges a fee to provide vehicle information and that, at a minimum, maintains records from those states participating in data sharing with the NMVTIS. Ss. 718.78(1)(e) and 713.78(4)(a), F.S.

²⁰ S. 713.585(1)(a), F.S.

²¹ S. 713.585(1)(b), F.S.

²² S. 713.585(1)(c), F.S.

²³ S. 713.585(1)(f), F.S.

²⁴ S. 713.585(1)(d), F.S.

²⁵ S. 713.585(1)(e), F.S.

²⁶ S. 713.585(1)(g), F.S.

²⁷ S. 713.585(1)(h), F.S.

²⁸ S. 713.585(1)(i), F.S.

²⁹ S. 713.585(1)(j), F.S.

³⁰ S. 713.585(13), F.S.

³¹ *Id.*

Unidentified Owner or Lienholder

A repair shop that cannot identify a vehicle's owner or lienholder must, after seven business days from the date storage charges begin to accrue on the vehicle, notify local law enforcement by certified mail or acknowledged hand delivery that:

- The repair shop was unable to identify the owner or lienholder;
- A physical search of the vehicle did not disclose ownership information; and
- The repair shop made a good faith effort to identify the owner or lienholder.³²

A good faith effort means the repair shop checked the:

- DHSMV database for the identity of the owner and lienholder;³³
- NMVTIS or an equivalent commercially available system to determine the state of registration if there is no current registration on file with the DHSMV;³⁴ and
- Vehicle for:
 - Any type of tag, tag record, temporary tag, or regular tag;³⁵
 - An inspection sticker or other stickers and decals that could indicate the state of possible registration;³⁶ and
 - Any papers that could be in the glove box, trunk, or other areas for the state of registration.³⁷

Failure of the repair shop to make a good faith effort to identify the owner or lienholder of the vehicle precludes it from assessing any storage charges.³⁸

Inspection of Vehicle; Release of Personal Property

Presently, registered owners, customers, and persons claiming an interest in or lien on a vehicle on which a repair shop claims a lien for repairs and storage do not have a statutory right to inspect the vehicle. Neither do they have an express statutory right to retrieve personal property left in a vehicle at the time the vehicle came into the possession of a repair shop before the release of the vehicle. Further, repair shops are not required to accept title³⁹ in a specified form as evidence of a person's interest in a vehicle.

Bond to Release Vehicle

A customer may have his or her vehicle released from a lien claimed by a repair shop for repair work performed under a written estimate by filing with the clerk of the court in the circuit in which the repairs occurred a bond, payable to the shop claiming the lien and conditioned for the payment of any judgment which may be entered on the lien.⁴⁰ When a customer posts such a bond, the clerk of the court must notify the repair shop of the bond and direct the shop to release the vehicle.⁴¹ The shop has 60 days to file suit to recover the bond, or else the bond will be discharged.⁴² The prevailing party in the suit may be awarded damages, court costs, and reasonable attorney fees.⁴³

³² S. 713.585(2), F.S.

³³ S. 713.585(2)(a), F.S.

³⁴ S. 713.585(2)(b), F.S.

³⁵ S. 713.585(2)(c), F.S.

³⁶ S. 713.585(2)(d), F.S.

³⁷ S. 713.585(2)(e), F.S.

³⁸ S. 713.585(13), F.S.

³⁹ A certificate of title is the record that evidences ownership of a vehicle, and can be either a paper certificate authorized by the DHSMV or an electronic certificate stored in the DHSMV database. S. 319.001(1), F.S.

⁴⁰ S. 559.917(1)(a), F.S.

⁴¹ *Id.*

⁴² S. 559.917(1)(b), F.S.

⁴³ *Id.*

A customer may also initiate judicial proceedings against a repair shop that does not release or return the vehicle after receiving notice of the bond and a directive to do so.⁴⁴ If the customer prevails in such proceedings, he or she may be entitled to damages, court costs, and reasonable attorney fees.⁴⁵ If the repair shop prevails, the repair shop may be entitled to its reasonable attorney fees.⁴⁶

However, persons of record claiming a lien against a vehicle are not entitled to post a bond for the release of the vehicle or to initiate judicial proceedings pursuant to this section.

Sale of the Vehicle; Notice

If the date of the sale was not included in the notice of claim of lien, the repair shop must send a notice of sale by certified mail, no less than 15 days before the date of the sale, to:

- The customer listed on the repair order; and
- All other persons claiming an interest in or lien on the vehicle, as disclosed by the records of:
 - The DHSMV; or
 - A corresponding agency of any other state in which the vehicle appears to have been registered after checking the NMVTIS or an equivalent commercially available system.⁴⁷

The repair shop must also publish notice of the time and place of the sale, at least 15 days before the date of the sale, in a newspaper of general circulation in the county in which the vehicle is held.⁴⁸

Proceeds of Sale

Following the sale of a vehicle to satisfy a lien for repairs or storage, the repair shop must deposit the proceeds of the sale, minus the amount owed for repairs and storage and all reasonable costs incurred in conducting the sale, with the clerk of the circuit court.⁴⁹ The clerk must hold the proceeds for the owner of the vehicle or any lienholder whose lien is discharged by the sale and may disburse the proceeds only upon a court order.⁵⁰

Transfer of Title

When a vehicle is sold to satisfy a lien for repairs or storage, the purchaser takes title to the vehicle free and clear of all liens unless otherwise provided by court order.⁵¹

To transfer title to the vehicle following a sale, the repair shop must file with the DHSMV:

- A certified copy of:
 - The certificate of compliance filed with the clerk of court; and
 - The report of sale;
- Proof of the required check of the NMVTIS or an equivalent commercially available system; and
- Any other proof required by DHSMV rules and regulations.⁵²

Liens for Recovering, Towing, or Storing Vehicles and Vessels

Towing and wrecker companies are licensed and regulated by the counties in which they operate and are regulated by county ordinances.⁵³ These ordinances may establish license application procedures

⁴⁴ S. 559.917(2), F.S.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ S. 713.585(3), F.S.

⁴⁸ S. 713.585(4), F.S.

⁴⁹ S. 713.585(8), F.S.

⁵⁰ *Id.*

⁵¹ S. 713.585(13), F.S.

⁵² S. 713.585(9), F.S.

and fees, maximum towing rates, towing authorization requirements, and penalties for ordinance violations, among other things.⁵⁴

There is no right at common law to a lien on a vehicle or vessel for towing and storage charges.⁵⁵ Such a lien is instead a statutory creation.⁵⁶

Claim of Lien; Notice

A person who regularly engages in transporting vehicles⁵⁷ or vessels⁵⁸ by wrecker⁵⁹, tow truck, or car carrier (towing-storage operator) may claim a lien for reasonable towing and storage fees upon any vehicle or vessel recovered, removed, or stored for more than 6 hours at the request of:

- The owner of the vehicle or vessel;⁶⁰
- The owner or lessor, or a person authorized by the owner or lessor, of property on which the vehicle or vessel is wrongfully parked;⁶¹
- A landlord, or a person authorized by a landlord, when the vehicle or vessel remained on leased premises after the tenancy terminated;⁶² or
- A law enforcement agency.⁶³

A towing-storage operator who claims a lien for recovery, towing, or storing services must send notice of the claim of lien to:

- The registered owner;
- The insurance company insuring the vehicle or vessel; and
- All persons claiming a lien on the vehicle or vessel, as disclosed by the records of:
 - The DHSMV; or
 - Any corresponding agency in another state in which the vehicle is identified as being titled or registered by the NMVTIS or an equivalent commercially available system.⁶⁴

The notice of claim of lien must be sent by certified mail within seven business days after the date of storage of the vehicle or vessel and state:

- The towing-storage operator possesses the vehicle or vessel;
- That a lien is claimed on the vehicle or vessel;
- That charges have accrued, and the amount of the charges;
- That the lien is subject to enforcement by law;
- That the owner and any lienholder have the right to a hearing; and
- That any vehicle or vessel that remains unclaimed, or for which the charges remain unpaid, may be sold.⁶⁵

⁵³ See, e.g., Hillsborough County, *Towing Companies*, <https://www.hillsboroughcounty.org/en/residents/citizens/consumer-issues/towing-companies> (last visited Mar. 6, 2019); Orange County, *Towing Information*, <http://www.orangecountyfl.net/traffictransportation/towingandparkinginformation/towinginformation.aspx#.XHdwbVxKiUk> (last visited Mar. 6, 2019).

⁵⁴ See, e.g., Miami-Dade County, *Towing License*, https://www8.miamidade.gov/global/license.page?Mduid_license=lic1495741572333567 (last visited Mar. 6, 2019).

⁵⁵ Fla. Jur. 2d Liens for Recovering, Towing, or Storing Vehicle, Generally § 31.

⁵⁶ S. 713.78, F.S.

⁵⁷ “Vehicle” means any mobile item, whether motorized or not, which is mounted on wheels. S. 713.78(1)(a), F.S.

⁵⁸ “Vessel” means every description of watercraft, barge, and airboat used or capable of being used as a means of transportation on water, other than a seaplane or a “documented vessel” as defined in s. 327.02, F.S. S. 713.78(1)(b), F.S.

⁵⁹ “Wrecker” means any truck or other vehicle which is used to tow, carry, or otherwise transport motor vehicles or vessels upon the streets and highways of this state and which is equipped for that purpose with a boom, winch, car carrier, or other similar equipment. S. 713.78(1)(c), F.S.

⁶⁰ S. 713.78(2)(a), F.S.

⁶¹ S. 713.78(2)(b), F.S. Removal must comply with s. 715.07, F.S.

⁶² S. 713.78(2)(c), F.S. Removal must comply with ss. 83.806 or 715.104, F.S.

⁶³ S. 713.78(2)(d), F.S.

⁶⁴ S. 713.78(4)(a), F.S.

⁶⁵ S. 713.78(4)(c), F.S.

If a law enforcement agency authorized a towing-storage operator to remove a vehicle or vessel, or a towing-storage operator notifies a law enforcement agency of possession of a towed vehicle or vessel,⁶⁶ the law enforcement agency where the vehicle or vessel is stored must contact the DHSMV, or the appropriate agency in the state of registration, if known, within 24 hours and provide a full description of the vehicle or vessel.⁶⁷ The DHSMV, or appropriate state agency, must search its records to determine the identity of the owner, the company insuring the vehicle or vessel, and any lienholders and provide the information to the law enforcement agency within 72 hours.⁶⁸ The towing-storage operator must obtain such information from the law enforcement agency within five days after the date of storage and provide the required notice.⁶⁹

Unidentified Owner or Lienholder

Any towing-storage operator who cannot identify the owner or lienholder of a vehicle or vessel must, after seven working days of the initial tow or storage, notify law enforcement in the jurisdiction where the vehicle or vessel is stored by certified mail or acknowledged hand delivery that:

- The towing-storage operator was unable to identify the owner or lienholder;
- A physical search of the vehicle or vessel did not disclose ownership information; and
- The towing-storage operator made a good faith effort to identify the owner or lienholder.⁷⁰

A good faith effort means the towing-storage operator checked the:

- DHSMV database;⁷¹
- Electronic NMVTIS or an equivalent commercially available system to determine the state of registration when there is not a current registration record for the vehicle on file with the DHSMV;⁷²
- Vehicle or vessel for:
 - Any type of tag, tag record, temporary tag, or regular tag;⁷³
 - An inspection sticker or other stickers and decals that may indicate the state of registration;⁷⁴
 - Any papers that may be in the glove box, trunk, or other areas for a state registration;⁷⁵ and
 - A vehicle identification number,⁷⁶ a vessel registration number,⁷⁷ or a hull identification number;⁷⁸
- Law enforcement report:
 - For a tag number or other information identifying the vehicle or vessel, if the vessel was towed at the request of a law enforcement officer;⁷⁹
 - To see if any driver's license information indicates an out-of-state address, if there is no address on the impound report,⁸⁰ and
- Trip sheet or tow ticket of the tow truck operator to see if a tag was on the vehicle or vessel at the beginning of the tow.⁸¹

⁶⁶ Within 30 minutes after completion of a tow or removal from private property without the consent of the registered owner or other legally authorized person, a towing-storage operator must notify the municipal police department, or, in an unincorporated area, the sheriff, of the tow or removal, the storage site, the time of the tow or removal, and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel. S. 715.07(2)(a)2., F.S.

⁶⁷ S. 713.78(4)(b), F.S.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ S. 713.78(4)(d), F.S.

⁷¹ S. 713.78(4)(d)1., F.S.

⁷² S. 713.78(4)(d)2., F.S.

⁷³ S. 713.78(4)(d)3., F.S.

⁷⁴ S. 713.78(4)(d)7., F.S.

⁷⁵ S. 713.78(4)(d)8., F.S.

⁷⁶ S. 713.78(4)(d)9., F.S.

⁷⁷ S. 713.78(4)(d)10., F.S.

⁷⁸ S. 713.78(4)(d)11., F.S.

⁷⁹ S. 713.78(4)(d)4., F.S.

⁸⁰ S. 713.78(4)(d)6., F.S.

Failure of the towing-storage operator to make a good faith effort to identify the owner or lienholder of the vehicle or vessel precludes the towing-storage operator from assessing any storage charges.⁸²

Inspection of Vehicles and Vessels; Release of Property

A towing-storage operator must permit vehicle or vessel owners, lienholders, insurance company representatives, or their agents,⁸³ to inspect the towed vehicle or vessel.⁸⁴ A towing-storage operator must also release to the owner, lienholder, or the agent of the owner or lienholder all personal property not affixed to a vehicle or vessel that was in the vehicle or vessel at the time the towing-storage operator obtained possession of it.⁸⁵ However, the towing-storage operator is not required to accept electronic title as proof of ownership or lien; thus, the towing-storage operator may require parties wishing to inspect the vehicle or vessel to present a paper title before allowing the inspection.

Bond to Release Vehicle or Vessel

The owner or lienholder of a vehicle or vessel subject to a lien for towing and storage charges may, within ten days after learning of the location of the vehicle or vessel, file a complaint in the county court of the county where the vehicle or vessel is stored to determine whether the vehicle or vessel was wrongfully taken or withheld.⁸⁶ The vehicle or vessel must be released if, after filing a complaint, the owner or lienholder files a bond with the clerk of the court to ensure the payment of charges owed for towing and storage should the owner or lienholder not prevail in litigation.⁸⁷ After posting bond, the clerk must issue a notice of the bond to the towing-storage operator and direct the towing-storage operator to release the vehicle or vessel.⁸⁸

Sale of Vehicles and Vessels; Notice

A towing-storage operator may sell at public auction a stored vehicle or vessel which remains unclaimed, or for which charges for recovery, towing, or storage remain unpaid, after:

- 35 days from the date of storage if the vehicle or vessel is more than 3 years old; or
- 50 days from the date of storage if the vehicle or vessel is 3 years old or less.⁸⁹

If a law enforcement agency notified of a towing-storage operator's inability to identify an owner or lienholder pursuant to s. 713.78(4)(d), F.S., fails to respond to such notice prior to the date of sale, the towing-storage operator may proceed with the sale.⁹⁰

If the date of the sale was not included in the notice of claim of lien, the towing-storage operator must send a notice of sale by certified mail, no less than 15 days before the date of the sale, to:

- The person in whose name the vehicle or vessel is registered; and
- All persons claiming a lien on the vehicle or vessel as shown in the records of the DHSMV or any corresponding agency in any other state in which the vehicle is identified as being titled by a records check of the NMVTIS or an equivalent commercially available system.⁹¹

⁸¹ S. 713.78(4)(d)5., F.S.

⁸² S. 713.78(9), F.S.

⁸³ An agency is evidenced by an original writing acknowledged by the owner before a notary public or other person empowered by law to administer oaths.

⁸⁴ S. 713.78(10), F.S.

⁸⁵ *Id.*

⁸⁶ S. 713.78(5)(a), F.S.

⁸⁷ S. 713.78(5)(b), F.S.

⁸⁸ *Id.*

⁸⁹ S. 713.78(6), F.S.

⁹⁰ Department of Highway Safety and Motor Vehicles, Procedure TL-26.

⁹¹ *Id.*

The towing-storage operator must also publish notice of the time and place of the sale, at least 10 days before the date of the sale, in a newspaper of general circulation in the county where the sale will occur.⁹²

Proceeds of Sale

If the owner or lienholder of the vehicle or vessel sold at auction is absent, the proceeds of the sale of the vehicle or vessel, minus any reasonable towing and storage charges owed and costs of the sale, must be deposited with the clerk of the court for the county where the sale occurred.⁹³ The clerk must hold the proceeds for the benefit of the owner or lienholder whose interest in the vehicle or vessel was destroyed by the sale.⁹⁴

Transfer of Title

Title to a vehicle or vessel sold to satisfy a lien for recovery, towing, or storage transfers to the purchaser free of all liens unless otherwise provided by court order.⁹⁵ To transfer title to such a vehicle, the towing-storage operator must apply to the tax collector or local license plate agency.⁹⁶ However, if the vehicle does not sell, the towing-storage operator must apply for a certificate of title in its own name.⁹⁷

Fraud Allegations

Some repair shops and towing-storage operators exploit existing lien law to wrest away vehicle finance and leasing companies' (lenders) security or ownership interest in vehicles upon which liens have been placed.⁹⁸ These practices allegedly take two forms: fraudulent delivery of the notice of lien and fraudulent or inflated charges.⁹⁹

In some instances, lenders receive an envelope by certified mail, sign for its receipt, and open it to discover the envelope is empty or contains meaningless documents.¹⁰⁰ However, the service provider may use the signed certified mail receipt as proof the lender received a notice of claim of lien and proceed with the sale of the vehicle when it goes unclaimed.¹⁰¹ In this situation, a lender is effectively denied the opportunity to satisfy the lien or challenge it in court and may be ultimately forced to abandon its interest in the vehicle because it failed to take action within statutorily prescribed timeframes.¹⁰²

In other instances, the service provider gives proper notice of claim of lien to the owner, lender, and other interested parties; however, the costs associated with the services provided may be fraudulent or significantly inflated.¹⁰³ In such cases, the cost to satisfy the lien may exceed the amount owed to the lender by the owner and, in some cases, the market value of the vehicle.¹⁰⁴ Lenders receiving notice of lien in these circumstances must decide whether to satisfy the lien and recover the vehicle, post a bond

⁹² S. 713.78(6), F.S.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ DHSMV, *supra*, at 90.

⁹⁷ *Id.*

⁹⁸ Letter from Danielle Arlowe, Senior Vice President of State Government Affairs for the American Financial Services Association, Re: House Bill 431- Motor Vehicle Lien Fraud (Feb. 11, 2019).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

to recover the vehicle and challenge the lien in court, or abandon the vehicle.¹⁰⁵ However, the lender may have limited information about the accuracy of the charges to use in making its decision.¹⁰⁶ Such lien fraud allegedly costs consumer and lenders tens of millions of dollars every year and increases the cost of credit for consumers wishing to finance the purchase of a motor vehicle.¹⁰⁷

Effect of the Proposed Changes

Liens Claimed by Motor Vehicle Repair Shops

Claim of Lien; Notice

CS/HB 431 continues to require notices of claims of lien required by s. 713.585(1), F.S., to be sent to the registered owner, the customer, and all other persons claiming an interest in or lien on the vehicle within seven business days after the date storage charges begin to accrue on the vehicle. However, the bill requires such notice to be sent at least 30 days before the date of the sale and allows repair shop agents to provide the notice.

The bill revises content requirements for a notice of claim of lien. In addition to existing requirements, a notice must:

- Include the vehicle identification number (VIN) of the vehicle subject to the lien clearly identified and printed in the delivery address box on the return receipt card¹⁰⁸ and on the outside of the envelopes; and
- Contain:
 - The repair shop's registration number, owner's name, and physical address and the entity name of the business where the repairs or storage occurred, which must also be on the outside of the envelopes;
 - The name of the person or entity that authorized the labor or services;
 - The date the vehicle was dropped off for repairs and the date the repairs were completed;
 - An itemized statement of the amount claimed to be owed to the repair shop;
 - Notice that the repair shop will make the vehicle available for inspection during regular business hours within three business days after receiving a written inspection request; and
 - The address where the vehicle is physically located.

Unidentified Owner or Lienholder

The bill modifies the timeframe for a repair shop that cannot identify a vehicle's owner or lienholder to provide the notice to local law enforcement required by s. 713.585(2), F.S., by requiring notice to be sent within seven business days after the date that storage charges begin to accrue on the vehicle.

The bill also modifies the timeframe for a repair shop to make a good faith effort to identify the owner or lienholder of a vehicle required by s. 713.585(2), F.S., by requiring the repair shop to do so within seven business days after the date of storage of the vehicle. The bill continues to prohibit a repair shop that fails to comply with this requirement from charging for more than seven days of storage.

Inspection of Vehicles; Release of Personal Property and Vehicle

The bill allows the registered owner, customer, and persons claiming an interest in or lien on a vehicle subject to a lien for repairs or storage to request an inspection of the vehicle at any time before the

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Letter from Danielle Arlowe, Senior Vice President of State Government Affairs for the American Financial Services Association, Re: House Bill 431- Motor Vehicle Lien Fraud (Feb. 11, 2019).

¹⁰⁸ The VIN must be clearly visible on the electronic image of the return receipt card.

proposed or scheduled date of sale of the vehicle. The bill requires repair shops to make the vehicle available for inspection during regular business hours within three business days after receiving a written inspection request from such persons, and requires a repair shop to accept either an electronic or paper title as evidence of person's interest in a vehicle.

The bill also requires a repair shop to release to a vehicle's owner or lienholder, or the agent of an owner or lienholder:

- All personal property found in but not affixed to a vehicle; and
- The vehicle, upon payment of the charges owed.

Bond to Release Vehicle

The bill adds any person of record claiming a lien against a vehicle to the list of persons who may have a vehicle released by filing a bond with the clerk of the court in the circuit in which the repairs occurred. The bill also allows such persons to initiate judicial proceedings against a repair shop that does not release or return the vehicle after receiving notice of the bond and a directive to release the vehicle. However, the bill does not authorize the registered owner to take such actions, unless the registered owner is also the customer.

Sale of Vehicles; Notice

The bill prohibits sale of a vehicle to satisfy a lien for repairs or storage within 60 days after completion of the repair work. The bill also modifies the timeframe applicable to notices of sale required by s. 713.585(3), F.S., by specifying that the requisite parties must receive the notice of sale at least 15 days before the date of the sale.

The bill adds requirements for the notice of sale. Such notice must contain:

- The VIN of the vehicle subject to the sale clearly identified and printed in the delivery address box of the return receipt card and on the outside of the envelopes;¹⁰⁹ and
- The repair shop's registration number, owner's name, and physical address, and the entity name of the business where the repair work or storage occurred, which must also be on the outside of the envelopes.

The bill requires a repair shop to publish a notice of sale in a newspaper circulated in the county where the repair shop completed the repairs and in the county where the sale of the vehicle will occur. The bill also adds to the list of what must be included in or filed with the certificate of compliance filed with the clerk of the court following publication:

- The VIN of the vehicle to be sold;
- A copy of the notice of sale; and
- A copy of all return receipts for mailing the notices, which must include the VIN.

Transfer of Title

To transfer title to a vehicle following the public sale to satisfy a lien for repairs or storage, the bill requires a repair shop to file with the DHSMV a copy of:

- The certificate of compliance, which includes the VIN;
- The notice of lien;
- The notice of sale; and
- All return receipts for mailing the notices, which must include the VIN.

¹⁰⁹ *Id.*

The bill also prohibits the DHSMV from approving such a title transfer if the application does not include a copy of:

- The notice of claim of lien;
- The notice of sale; and
- All return receipts for mailing of the notices, indicating their timely receipt and the VIN.¹¹⁰

Fees

The bill allows a repair shop, or its agent, to add a fee for administrative costs not to exceed \$250 to the amount due for storage or repairs to the vehicle. However, the bill precludes the repair shop from charging fees not authorized by s. 713.585, F.S. Further, the bill prohibits a repair shop from charging fees authorized by s. 713.585, F.S., which, added together, total more than \$250.

Third-Party Mailing Service

The bill requires repair shops and their agents to use a third-party mailing service certified by the DHSMV to transmit notices of lien and sale. The bill defines a third-party mailing service as a business entity certified by the DHSMV that:

- Accesses NMVTIS records to obtain the last state of record of a vehicle;
- Accesses the owner, lienholder, and insurer information for a vehicle from the DHSMV;
- Electronically generates the notices of lien and sale;
- Prints and sends the notices of lien and sale to each owner, lienholder, and insurer of record by certified mail; and
- Electronically returns tracking information or other proof of mailing and delivery of the notices to the repair shops.

The bill requires third-party mailing services to apply to the DHSMV for certification before providing notices of lien and sale on behalf of repair shops. The DHSMV may certify an applicant if it:

- Provides the DHSMV with evidence that it has been issued a current and valid \$1,000,000.00 bond by a surety insurer authorized to do business in Florida; and
- Submits a positive audit of the applicant's internal controls performed within the last year by an independent certified public accountant licensed pursuant to chapter 473, F.S.

The bill authorizes the DHSMV to deny or revoke a third-party mailing service's certification if it determines that it committed an act of fraud or misrepresentation related to a notice required by this section. A certification is valid for one year, and the DHSMV may not renew the certification if the service does not maintain the minimum qualifications for initial certification.

The bill requires a third-party mailing service to maintain all records of notices of lien and of sale for five years, and allows record retention in an electronic format.

Unlawful Acts and Practices

The bill makes it unlawful for a repair shop and its employees to violate any provision of s. 713.585, F.S., regarding the enforcement of liens for repair and storage costs by sale of the vehicles subject to the liens. A violation of s. 713.585, F.S., constitutes a violation of the Florida Motor Vehicle Repair Act.

¹¹⁰ The VIN on the return receipts must match the VIN of the vehicle subject to the transfer of title and must be clearly visible on the electronic image of the turn receipt card available on the United States Postal Service (USPS) website.

Liens for Recovering, Towing, or Storing Vehicles and Vessels

Claim of Lien; Notice

The bill continues to require towing-storage operators to send the notice of claim of lien required by s. 713.78(4), F.S., to the registered owner, the insurance company insuring the vehicle, and all lienholders within seven business days after the date of storage of the vehicle or vessel. However, the bill requires such notice to be sent at least 15 days before the date of the sale.

The bill revises requirements for a notice of claim of lien. In addition to existing requirements, a notice must:

- Include a clearly identified and printed VIN, if the claim of lien is for a vehicle:
 - In the delivery address box of the return receipt card;
 - On the outside of the envelopes; and
 - On the electronic image of the return receipt card;
- State the name, physical address, and telephone number of the towing-storage operator and the entity name of the business where the towing and storage occurred, which must also appear on the outside of the envelopes;
- State the name of the person or entity that authorized the towing-storage operator to take possession of the vehicle or vessel;
- List the address where the vehicle or vessel is physically located;
- State that charges have accrued and include an itemized statement of said charges; and
- State that any vehicle or vessel that goes unclaimed, or for which the charges owed remain unpaid, may be sold:
 - 35 days after the vehicle or vessel is stored if the vehicle or vessel is more than 3 years old; or
 - 50 days after the vehicle or vessel is stored if the vehicle or vessel is 3 years old or less.

The bill prohibits a towing-storage operator that fails to provide a notice of claim of lien from charging for more than seven days of storage. Such failure does not prohibit the towing-storage operator from charging for towing the vehicle or vessel.

Inspection of Vehicles and Vessels; Release of Property

The bill requires a towing-storage operator to accept either an electronic or paper title as evidence of a person's interest in a vehicle or vessel.

Bond to Release Vehicles or Vessels

The bill authorizes an owner or lienholder to post a bond for release of a vehicle or vessel with the clerk of the court at any time before the sale of the vehicle or vessel. The owner or lienholder is no longer required to file a complaint before posting such a bond.

Sale of Vehicles; Notice

The bill adds requirements for a notice of sale required by s. 713.78, F.S. The notice must:

- Include the VIN of the vehicle subject to sale in the delivery address box of the return receipt card, on the outside of the envelopes, and on the electronic image of the return receipt card, if the claim of lien is for a vehicle; and
- State the name, physical address, and telephone number of the towing-storage operator, which must also be on the envelopes.

Transfer of Title

To transfer title to a vehicle or vessel after a public sale to satisfy a lien for recovery, towing, or storage charges, the bill requires a towing-storage operator to file with the DHSMV:

- Copies of:
 - The notice of lien;
 - The notice of sale; and
 - All return receipts for mailing of the notices, which must include the VIN if the claim of lien was for a vehicle; and
- Proof of the required check of the records of the NMVTIS or an equivalent commercially available system.

The bill also prohibits the DHSMV from approving such a title transfer if the application does not include copies of:

- The notice of lien;
- The notice of sale; and
- All return receipts for mailing of the notices, indicating their timely receipt and the VIN.¹¹¹

Fees

The bill allows a towing-storage operator, or its agent, to add a fee for administrative costs not to exceed \$250 to the amount due for towing and storing a vehicle.¹¹² However, the bill precludes the towing-storage operator from charging fees not authorized by ss. 125.013, 166.043, and 713.78, F.S. Further, the bill prohibits towing-storage operators from charging fees authorized by these sections which, added together, total more than \$250.

Third-Party Mailing Service

The bill requires towing-storage operators to use a third-party mailing service certified by the DHSMV to transmit notices of lien and sale. The definition of “third-party mailing service,” the requirements for certification and the denial, revocation, and renewal of certification, and the record maintenance provisions are identical to the provisions applicable to third-party mailing services sending notices of lien and sale for a repair shop.

The bill provides an effective date of January 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 559.917, F.S., relating to bond to release possessory lien claimed by motor vehicle repair shops.

Section 2: Amends s. 559.920, F.S., relating to unlawful acts and practices.

Section 3: Amends s. 713.585, F.S., relating to enforcement of lien by sale of motor vehicle.

Section 4: Amends s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.

Section 5: Provides an effective date of January 1, 2020.

¹¹¹ If the claim of lien is for a vehicle, the VIN on the return receipts must match the VIN of the vehicle subject to the title transfer and must be clearly visible on the electronic image of the return receipt card available on the USPS website.

¹¹² The bill does not permit a towing-storage operator to charge such a fee for towing or storing a vessel.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DHSMV must certify a third-party mailing service before it can send notices of lien and sale on behalf of lienors. There is an indeterminate cost associated with certification that may be absorbed in existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce losses experienced by motor vehicle and vessel lienholders, including lenders, as it may reduce fraudulent practices relating to notices of lien and sale. The bill may also reduce costs to consumers hoping to finance the purchase of a vehicle.

The bill may impact repair shops and towing-storage operators by capping the amount of administrative costs and fees they may add to the amount due for repair, towing, or storage of a vehicle or vessel.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2019, the Civil Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Replaced references to the date a notice of lien or sale is received with references to the dates such notices are sent;
- Eliminated an alternative 10-day timeframe for lienors to provide a notice of lien;
- Added information that must be in a notice of lien, including the date the vehicle was dropped off for repairs, the date the repairs were completed, and the address where the vehicle is physically located;
- Required a towing-storage operator to send a notice of lien at least 15 days before the date of the sale of a vehicle or vessel;
- Required motor vehicle repair shops to make a vehicle available for inspection within three business days after receipt of a written inspection request from the owner, the customer, or a person claiming an interest in the vehicle;
- Required lienors to accept either an electronic or paper title as evidence of a person's interest in a vehicle or vessel;
- Required lienors to use a third-party mailing service certified by the DHSMV to send notices of lien and sale, defined the term "third-party mailing service," and established a certification process;
- Required motor vehicle repair shops to release to the owner, lienholder, or their respective agents all personal property found in but not affixed to a vehicle;
- Required motor vehicle repair shops to release a vehicle upon payment of the charges owed for services;
- Changed the effective date from July 1, 2019, to January 1, 2020; and
- Made non-substantive grammatical changes.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.